

# Exhibit

A



C> Cmc  
C-2215D  
Fax Filing Transmittal To  
MARGARET G. MONTEMAYOR,  
BEXAR COUNTY DISTRICT CLERK  
Fax (210) 335-2553



BEXAR COUNTY COURTHOUSE  
100 DOLOROSA  
SAN ANTONIO TEXAS 78205  
Voice (210) 335-2113

## REQUEST FOR PROCESS

Cause No.

2009 CI 06289

Court:

Style: Russell D. MartinVS City of San AntonioDate: April 15, 094081b  
2  
PROCESS DEPT

Request the following process:

Citation     Notice     Precept     Temporary Restraining Order  
 Subpoena     Subpoena Duces Tecum (Describe Duces Tecum on Reverse)     Other (Describe)

Information for subpoena:	Date:	Time:	Court:
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Parties to be served (type or print): City of San Antonio

1. Hon. Leticia M. Vacek, City Clerk of San AntonioAddress: 100 Military Plaza, 2nd Floor  
San Antonio, TX 78205 Type\* Certified mail.

2. \_\_\_\_\_

Address: \_\_\_\_\_

Type\* \_\_\_\_\_

3. \_\_\_\_\_

Address: \_\_\_\_\_

Type\* \_\_\_\_\_

4. \_\_\_\_\_

Address: \_\_\_\_\_

Type\* \_\_\_\_\_

5. \_\_\_\_\_

Address: \_\_\_\_\_

Type\* \_\_\_\_\_

\*Type: Sheriff; Constable Precinct \_\_\_\_\_; Private Process Server; Certified Mail; Registered Mail; Out of County;  
Out of State; Secretary of State; Commissioner of Insurance.

Name and address of attorney:	<u>Javier N. Maldonado,</u> <u>110 Broadway, Ste. 510, San Antonio, TX 78205</u>
Attorney for:	<input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Other
Attorney's Bar No. <u>00794216</u>	

Thank you for Fax Filing. If you have questions, please call (210) 335-2621	
---	--

CERTIFIED MAIL #71603901984625363072

"The State of Texas"

NO. 2009-CI-06289

2009CI06289-S00001

RUSSELL D MARTIN

Plaintiff  
vs.

CITY OF SAN ANTONIO

Defendant

( Note: Attached Document May Contain Additional Litigants. )

IN THE DISTRICT COURT  
408th JUDICIAL DISTRICT  
BEXAR COUNTY, TEXAS

APR 20 PM 4:06

CITY OF SAN ANTONIO  
CITY CLERK**NOTICE****Citation Directed to:** CITY OF SAN ANTONIO- BY SERVING THE HONORABLE LETICIA M VACEK, CITY CLERK,CITY OF SAN ANTONIO100 MILITARY PLAZA 2ND FL  
SAN ANTONIO TX 78205-2425

"You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you." Said petition was filed on the 15th day of April, 2009.

ISSUED UNDER MY HAND AND SEAL OF SAID COURT ON THIS 16th DAY OF April  
A.D., 2009.

PLAINTIFF'S ORIGINAL PETITION



MARGARET G. MONTEMAYOR  
District Clerk of Bexar County, Texas  
Bexar County Courthouse  
San Antonio, Texas 78205

*Angela Dominguez* Deputy  
ANGELA DOMINGUEZ

JAVIER N MALDONADO

Attorney/PLAINTIFF

address

110 BROADWAY ST 510  
SAN ANTONIO, TX 78205-1948**OFFICER'S RETURN**

Came to hand on the 16th day of April, A.D., 2009 at 8:41 o'clock A.M. and  
EXECUTED (NOT EXECUTED) by CERTIFIED MAIL, on the        day of       , A.D.,  
      , by delivering to        a true copy of this  
citation, upon which I endorsed the date of delivery, together  
with the accompanying copy of the PLAINTIFF'S ORIGINAL PETITION

Cause of failure to execute this \_\_\_\_\_ is \_\_\_\_\_.

MARGARET G. MONTEMAYOR  
Clerk of the District Courts of  
Bexar County, Texas

By \_\_\_\_\_ Deputy

ANGELA DOMINGUEZ

ORIGINAL  
(DK003)

C.C.M.  
w/JS

FILED  
DISTRICT CLERK  
BEXAR COUNTY, TEXAS  
Cause No. 2009CI06289

RUSSELL D. MARTIN, 09 APR 15 PM 4:26  
Plaintiff,

IN THE DISTRICT COURT

vs. REPLICA  
BY  
CITY OF SAN ANTONIO, REPLICA  
Defendant.

JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

**408th**

2

PLAINTIFF'S ORIGINAL PETITION

NOW COMES RUSSELL D. MARTIN, and files this his Original Petition against Defendant City of San Antonio ("Defendant" or "San Antonio"), and would respectfully show the Court as follows:

1. Pursuant to Tex. R. Civ. P. 190.3, discovery is intended to be conducted at Level 2.

Parties

2. Plaintiff is an individual residing in Stockdale, Wilson County, Texas. Defendant City of San Antonio is a local governmental entity as such term is defined in Tex. Gov't Code § 554.001(2)(B). Defendant San Antonio may be served with process by serving the Honorable Leticia M. Vacek, City Clerk, City of San Antonio, at 100 Military Plaza, 2<sup>nd</sup> Floor, San Antonio, Texas 78205. Plaintiff affirmatively pleads that he seeks injunctive relief, actual damages, courts, reasonable attorney's fees, reinstatement, compensation for lost wages, and the maximum amount of monetary relief for compensatory damages as allowed under Tex. Gov't Code § 554.003.

09 APR 20 PM 4:26  
CITY CLERK  
SAN ANTONIO

Jurisdiction and Venue

3. Plaintiff seeks relief within the jurisdictional limits of this Court. This Court has subject matter jurisdiction of this cause pursuant to Tex. Const. Art. V § 8 and

Tex. Gov't Code § 554.007. This Court also has personal jurisdiction over the parties, namely, a local governmental unit of the State of Texas and a natural person residing in Texas.

4. Venue is proper under Tex. Civ. Prac. & Rem. Code § 15.02 as Bexar County is the county in which all or a substantial part of the events or omissions giving rise to the claim occurred.

### Facts

6. Plaintiff is a 62 year-old male. In 1969, Defendant San Antonio's Police Department hired Plaintiff in its patrol unit. Plaintiff subsequently worked for the Traffic Division and then the Expressway Patrol. In 1979, Plaintiff voluntarily left Defendant's employment to work for the Southern Pacific Railroad.

7. Plaintiff again applied for employment with Defendant in 1989 and Defendant San Antonio hired Plaintiff to work as a police officer with the San Antonio Airport Police Department.

8. On or about March 18, 2008, Plaintiff reported to his immediate supervisor, Airport Police Lieutenant (Lt.) John Gruchacz, that Airport Police Sergeant (Sgt.) Orlando Battles was fraudulently reporting his work hours, in effect violating, among other laws, Tex. Penal Code §§ 37.02 (perjury) and 37.10 (tampering with a government record).

9. Such allegation was subsequently forwarded to Lt. Richard Griffin.

11. On or about June 16, 2008, Lt. Griffin forwarded Plaintiff's complaint of Sgt. Battles to Airport Police Chief Ron Bruner.

12. Soon after Chief Bruner received Plaintiff's allegation of wrongdoing by

Sgt. Battles, Defendant and its agents began a campaign of retaliation against Plaintiff.

13. On June 17, 2008, Lt. Gruchacz assigned Plaintiff to work under Sgt. Battles, the same person Plaintiff reported to Defendant for committing criminal violations.

14. Plaintiff complained to Lt. Gruchacz and submitted written objections about the reassignment.

15. On June 20, 2008, Chief Bruner advised Plaintiff that he would not be working under Sgt. Battles.

16. But on June 24, 2008, Defendant San Antonio advised Plaintiff that the department's Internal Affairs Unit was investigating disciplinary action against him for an email Plaintiff wrote to Lt. Gruchacz on March 1, 2008.

17. On August 6, 2008, Plaintiff appeared before the Advisory Action Board regarding alleged violations relating to the email he sent to Lt. Gruchacz on March 1, 2008. At the same time that it was reviewing Plaintiff's case, the Board was also considering disciplinary action against two other officers, one of them being Sgt. Battles for his fraudulent reporting of work hours. Plaintiff later learned that the Board recommended that he be suspended for 3 days and that Sgt. Battles be suspended for 10 days.

18. Later on November 18, 2008, Plaintiff was called to a meeting with Chief Bruner, Lt. Griffin, Lt. Gruchacz, Assistant Aviation Director Tim O'Krongley, and Human Resource Specialist Mona Osburn. At this meeting, Defendant served Plaintiff with a proposed notice of termination for alleged violations arising out of the March 1, 2008 incident as well as comments Plaintiff allegedly made on June 18, 2008.

19. The alleged June 18, 2008 comments concerned Plaintiff's reservations about working under Sgt. Battles. According to Defendant, such comments were a violation of the workplace violence policy and required Plaintiff's immediate suspension notwithstanding the fact that Plaintiff had been working for five (5) months without any problems. Moreover, this was the first time Defendant ever notified Plaintiff that his June 18, 2008 comments were the subject of disciplinary action.

20. On November 18, 2008, Defendant placed Plaintiff on administrative leave pending a decision on his proposed termination.

21. On November 25, 2008, Plaintiff submitted a response to Defendant's proposed termination. Defendant, however, did not allow Plaintiff to come onto airport property and required that Lt. Griffin escort Plaintiff.

22. On December 9, 2008, Plaintiff met with Ms. Osburn, Chief Bruner, and Lt. Griffin. Defendant served Plaintiff with a final notice of termination of his employment.

23. Plaintiff timely appealed his termination to the San Antonio Municipal Civil Commission and the Commission held a hearing on Plaintiff's termination on February 19-20, 2009.

24. At the conclusion of the hearing, the Commission concluded that Defendant's evidence did not support Plaintiff's termination and recommended that Defendant reverse its decision to terminate Plaintiff and, instead, reinstate him. In addition, the Commission recommended that Plaintiff be suspended for 3 days for the March 1, 2008 email and 5 days for the June 18, 2008 comments.

25. On March 17, 2009, Defendant City Manager Sheryl Sculley rejected the

Commission's findings and recommendation even though she had neither the benefit of having heard live testimony or reviewing the evidence against Plaintiff.

**Unlawful Retaliation**

26. Incorporating the paragraphs above, Plaintiff alleges that Defendant retaliated against him in violation of Tex. Gov't Code §554.002 by terminating Plaintiff's employment for his reporting of a violation of law by another public employee to an appropriate law enforcement authority.

**Damages**

27. As a result of the Defendant's unlawful conduct, Plaintiff has suffered and will continue to suffer actual and compensatory damages.

28. Plaintiff seeks all the remedies and relief authorized by Tex. Gov't Code §554.003, including but not limited to court costs, reinstatement, actual damages, lost wages, front pay, court costs, attorney's fees, and compensatory damages for past and future pecuniary losses, emotional pain, suffering inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses.

**Exhaustion of Administrative Procedures**

29. Plaintiff has exhausted all administrative procedures prerequisite to bringing this cause to Court. Plaintiff availed himself of the appeal procedures afforded to city employees and timely appealed his termination to the San Antonio Civil Service Commission.

30. Defendant rendered a final decision on Plaintiff's appeal on March 17, 2009.

31. This suit is filed within the 30 days after exhaustion of March 17, 2009,

the date when the appeal procedures were exhausted.

32. Plaintiff demands a jury trial on all issues of fact and damages arising in this case.

**Prayer for Relief**

WHEREFORE. Plaintiff requests that Defendant be cited to appear and answer, and that on final trial, Plaintiff have the following:

1. Judgment against Defendant for the lost wages, front pay, actual damages and compensatory damages suffered by Plaintiff as a result of Defendant's conduct, in an amount within the jurisdictional limits of the Court;
2. An order directing Defendant to reinstate Plaintiff to his former position or an equivalent position;
3. Costs of suit;
4. Reasonable attorney's fees;
5. Such other and further relief to which the Plaintiff may be justly entitled.

Respectfully Submitted,

JAVIER N. MALDONADO  
Texas Bar No. 00794216  
110 Broadway St., Ste. 510  
San Antonio, Texas 78205  
Phone: 210-227-1603  
Facsimile: 210-225-3958

Juan M. Gonzalez  
Texas Bar No. 24002158  
Gonzalez & Otero LLC  
110 Broadway St., Ste. 510  
San Antonio, TX 78205  
Phone: 210-587-4000  
Fax: 210-587-4001

ATTORNEYS FOR PLAINTIFF

RECEIVED  
CITY OF SAN ANTONIO  
CITY CLERK

09 APR 20 PM 4:06

049J82013211  
\$ 05.49  
04/17/2009  
Mailed From 78205  
US POSTAGE

CITY CLERK, OHIO

09 APR 20 PM 4:06



MARGARET G. MONTEMAYOR  
BEXAR COUNTY DISTRICT CLERK  
BEXAR COUNTY COURTHOUSE  
SAN ANTONIO, TEXAS 78205-3002

RETURN SERVICE REQUESTED

CITY OF SAN ANTONIO BY CERTIFIED MAIL  
TO THE MILITARY PLAZA 2ND FL.  
SAN ANTONIO, TX 78205-2425

2009C106289 4/16/2009 C1TCM ANGELA DOMINGUEZ

78205-2425 CO41 - *Handwritten address*

RUSSELL D. MARTIN

V.

CITY OF SAN ANTONIO

No. 2009CT06289  
DISTRICT CLERK  
BEXAR CO. TEXAS

2009 MAY - § A 10:29  
DEPUTY  
§  
BY \_\_\_\_\_

IN THE DISTRICT COURT

408TH JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

ORIGINAL ANSWER OF DEFENDANT  
CITY OF SAN ANTONIO

TO THE HONORABLE JUDGE OF THE COURT:

NOW COMES Defendant, the CITY OF SAN ANTONIO, in the above entitled and numbered cause. Reserving the right to file other and further pleadings, exceptions, and denials, it files this document as its Original Answer to Plaintiff's Original Petition. In support thereof, it would respectfully show unto the Court as follows:

I.

Defendant, the CITY OF SAN ANTONIO, denies the allegations contained in *Plaintiff's Original Petition* and demands strict proof thereof by a preponderance of the credible evidence.

II.

Defendant, the CITY OF SAN ANTONIO, specifically asserts that it is a home-rule municipality pursuant to its City Charter and the laws of the State of Texas. Defendant, the CITY OF SAN ANTONIO, asserts its entitlement to governmental immunity.

III.

Defendant, the CITY OF SAN ANTONIO, pleads the limitation of liability provided by Tex. Labor Code § 21.258 and § Section 21.2585.

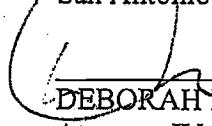
IV.

Defendant the CITY OF SAN ANTONIO specifically asserts that any and all actions taken by Defendant with respect to Plaintiff were based on business necessity.

WHEREFORE, PREMISES CONSIDERED, Defendant, the CITY OF SAN ANTONIO, prays that the Plaintiff take nothing by his lawsuit against it and that Defendant, the CITY OF SAN ANTONIO, go hence with costs without a day.

Respectfully submitted,

CITY OF SAN ANTONIO  
Michael D. Bernard, City Attorney  
SBN: 02211310  
Office of the City Attorney  
Litigation Division  
111 Soledad St., 10<sup>th</sup> Floor  
San Antonio, TX 78205

  
DEBORAH LYNNE KLEIN  
Attorney IV  
SBN: 11556750  
(210) 207-8919 / (210) 207-4357 FAX

*Attorney for Defendant*

**CERTIFICATE OF SERVICE**

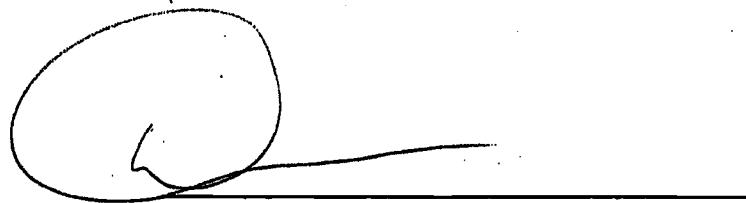
I hereby certify that a true and correct copy of the foregoing instrument has been served on the following on May 8, 2009:

Javier N. Maldonado  
Law Office of Javier N. Maldonado, P.C.  
110 Broadway St., Suite 510  
San Antonio, Texas 78205

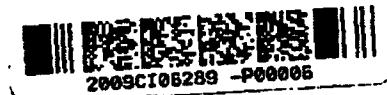
CMRRR

Juan M. Gonzalez  
Gonzalez & Otero, LLC  
110 Broadway St., Suite 510  
San Antonio, Texas 78205

CMRRR



DEBORAH LYNNE KLEIN



Cause No. 2009-CI-06289

RUSSELL D. MARTIN,  
Plaintiff,

vs.

CITY OF SAN ANTONIO,  
Defendant.

§  
§  
§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT

408<sup>TH</sup> JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

**PLAINTIFF'S FIRST AMENDED PETITION**

NOW COMES RUSSELL D. MARTIN, and files this his First Amended Petition against Defendant City of San Antonio ("Defendant" or "San Antonio"), and would respectfully show the Court as follows:

1. Pursuant to Tex. R. Civ. P. 190.3, discovery is intended to be conducted at Level 2.

**Parties**

2. Plaintiff is an individual residing in Stockdale, Wilson County, Texas. Defendant City of San Antonio is a local governmental entity as such term is defined in Tex. Gov't Code § 554.001(2)(B). Defendant San Antonio may be served with process by serving the Honorable Leticia M. Vacek, City Clerk, City of San Antonio, at 100 Military Plaza, 2<sup>nd</sup> Floor, San Antonio, Texas 78205. Plaintiff affirmatively pleads that he seeks injunctive relief, actual damages, courts, reasonable attorney's fees, reinstatement, compensation for lost wages, and the maximum amount of monetary relief for compensatory damages as allowed under Tex. Gov't Code § 554.003.

**Jurisdiction and Venue**

3. Plaintiff seeks relief within the jurisdictional limits of this Court. This Court has subject matter jurisdiction of this cause pursuant to Tex. Const. Art. V § 8 and

Tex. Gov't Code § 554.007. This Court also has personal jurisdiction over the parties, namely, a local governmental unit of the State of Texas and a natural person residing in Texas.

4. Venue is proper under Tex. Civ. Prac. & Rem. Code § 15.02 as Bexar County is the county in which all or a substantial part of the events or omissions giving rise to the claim occurred.

#### Facts

5. Plaintiff is a 62 year-old male. In 1969, Defendant San Antonio's Police Department hired Plaintiff in its patrol unit. Plaintiff subsequently worked for the Traffic Division and then the Expressway Patrol. In 1979, Plaintiff voluntarily left Defendant's employment to work for the Southern Pacific Railroad.

6. Plaintiff again applied for employment with Defendant in 1989 and Defendant San Antonio hired Plaintiff to work as a police officer with the San Antonio Airport Police Department.

7. On or about March 2007, Plaintiff was working as acting Sergeant under the supervision of Lt. John Gruchacz. Several weeks later, I became aware that Lt. Gruchacz was discriminating and retaliating against Patrol Officer Kim Igleheart because of her sex and disabled condition and for opposing discrimination. Lt. Gruchacz instructed me to "get" Ms. Igleheart on anything I could. I told Lt. Gruchacz that I would not participate in retaliation against Ms. Igleheart.

8. On or about June 22, 2007, Plaintiff was interviewed by Defendant's EEO office concerning allegations of discrimination and retaliation against Ms. Igleheart by Lt. Gurchacz.

9. Thereafter, on or about, September 2007, Lt. Gurchacz, acting within the course and scope of his employment with Defendant, demoted Plaintiff by stripping Plaintiff of his "acting Sergeant" position.

10. Further, on or about March 18, 2008, Plaintiff reported to his immediate supervisor, Lt. Gruchacz, that Airport Police Sergeant (Sgt.) Orlando Battles was fraudulently reporting his work hours, in effect violating, among other laws, Tex. Penal Code §§ 37.02 (perjury) and 37.10 (tampering with a government record).

11. Such allegation was subsequently forwarded to Lt. Richard Griffin.

12. On or about June 16, 2008, Lt. Griffin forwarded Plaintiff's complaint of Sgt. Battles to Airport Police Chief Ron Bruner.

13. Soon after Chief Bruner received Plaintiff's allegation of wrongdoing by Sgt. Battles, Defendant and its agents began a campaign of retaliation against Plaintiff.

14. On June 17, 2008, Lt. Gruchacz assigned Plaintiff to work under Sgt. Battles, the same person Plaintiff reported to Defendant for committing criminal violations.

15. Plaintiff complained to Lt. Gruchacz and submitted written objections about the reassignment.

16. On June 20, 2008, Chief Bruner advised Plaintiff that he would not be working under Sgt. Battles.

17. But on June 24, 2008, Defendant San Antonio advised Plaintiff that the department's Internal Affairs Unit was investigating disciplinary action against him for an email Plaintiff wrote to Lt. Gruchacz on March 1, 2008.

18. On August 6, 2008, Plaintiff appeared before the Advisory Action Board

regarding alleged violations relating to the email he sent to Lt. Gruchacz on March 1, 2008. At the same time that it was reviewing Plaintiff's case, the Board was also considering disciplinary action against two other officers, one of them being Sgt. Battles for his fraudulent reporting of work hours. Plaintiff later learned that the Board recommended that he be suspended for 3 days and that Sgt. Battles be suspended for 10 days.

19. Later on November 18, 2008, Plaintiff was called to a meeting with Chief Bruner, Lt. Griffin, Lt. Gruchacz, Assistant Aviation Director Tim O'Krongley, and Human Resource Specialist Mona Osburn. At this meeting, Defendant served Plaintiff with a proposed notice of termination for alleged violations arising out of the March 1, 2008 incident as well as comments Plaintiff allegedly made on June 18, 2008.

20. The alleged June 18, 2008 comments concerned Plaintiff's reservations about working under Sgt. Battles. According to Defendant, such comments were a violation of the workplace violence policy and required Plaintiff's immediate suspension notwithstanding the fact that Plaintiff had been working for five (5) months without any problems. Moreover, this was the first time Defendant ever notified Plaintiff that his June 18, 2008 comments were the subject of disciplinary action.

21. On November 18, 2008, Defendant placed Plaintiff on administrative leave pending a decision on his proposed termination.

22. On November 25, 2008, Plaintiff submitted a response to Defendant's proposed termination. Defendant, however, did not allow Plaintiff to come onto airport property and required that Lt. Griffin escort Plaintiff.

23. On December 9, 2008, Plaintiff met with Ms. Osburn, Chief Bruner, and

Lt. Griffin. Defendant served Plaintiff with a final notice of termination of his employment.

24. Plaintiff timely appealed his termination to the San Antonio Municipal Civil Commission and the Commission held a hearing on Plaintiff's termination on February 19-20, 2009.

25. At the conclusion of the hearing, the Commission concluded that Defendant's evidence did not support Plaintiff's termination and recommended that Defendant reverse its decision to terminate Plaintiff and, instead, reinstate him. In addition, the Commission recommended that Plaintiff be suspended for 3 days for the March 1, 2008 email and 5 days for the June 18, 2008 comments.

26. On March 17, 2009, Defendant City Manager Sheryl Sculley rejected the Commission's findings and recommendation even though she had neither the benefit of having heard live testimony or reviewing the evidence against Plaintiff.

**Unlawful Retaliation**

27. Incorporating the paragraphs above, Plaintiff alleges that Defendant retaliated against him (i) in violation of Tex. Labor Code §21.055 for Plaintiff's opposition of a discriminatory practice and his participation in an investigation, proceeding or hearing ; and (ii) in violation of Tex. Gov't Code §554.002 by terminating Plaintiff's employment for participating in protective activity by reporting a violation of law by another public employee to an appropriate law enforcement authority.

**Damages**

28. As a result of the Defendant's unlawful conduct, Plaintiff has suffered and will continue to suffer actual and compensatory damages.

29. Plaintiff seeks all the remedies and relief authorized by Tex. Labor Code §21.2585, Tex. Labor Code §21.259, and Tex. Gov't Code §554.003, including but not limited to court costs, reinstatement, actual damages, lost wages, front pay, court costs, attorney's fees, and compensatory damages for past and future pecuniary losses, emotional pain, suffering inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses.

**Exhaustion of Administrative Procedures**

30. Plaintiff has exhausted all administrative procedures prerequisite to bringing this cause to Court.

31. Plaintiff availed himself of the appeal procedures afforded to city employees and timely appealed his termination to the San Antonio Civil Service Commission.

32. Defendant rendered a final decision on Plaintiff's appeal on March 17, 2009.

33. This suit was filed within the 30 days after exhaustion of March 17, 2009, the date when the appeal procedures were exhausted.

34. Further, on or about May 6, 2009, Plaintiff filed a complaint with the EEOC, with election that such complaint be filed with the Civil Rights Division of the Texas Workforce Commission, alleging that Defendant had unlawfully retaliated against him.

35. On or about July 30, 2009, the EEOC issued a decision with respect to Plaintiff's retaliation claim. Such decision was received by Plaintiff's counsel on or about August 2, 2009.

36. On or about August 24, 2009, the Texas Workforce Commission issued a Right to Sue notice. This suit is filed within two years of the accrual of the action and is timely. Therefore, Plaintiff has exhausted all administrative procedures prerequisite to bringing this cause to court.

37. Plaintiff demands a jury trial on all issues of fact and damages arising in this case.

**Prayer for Relief**

WHEREFORE, Plaintiff requests that Defendant be cited to appear and answer, and that on final trial, Plaintiff have the following:

1. Judgment against Defendant for the lost wages, front pay, actual damages and compensatory damages suffered by Plaintiff as a result of Defendant's conduct, in an amount within the jurisdictional limits of the Court;
2. An order directing Defendant to reinstate Plaintiff to his former position or an equivalent position;
3. Costs of suit;
4. Reasonable attorney's fees;
5. Such other and further relief to which the Plaintiff may be justly entitled.

Respectfully Submitted,

JAVIER N. MALDONADO  
Texas Bar No. 00794216  
110 Broadway St., Ste. 510  
San Antonio, Texas 78205  
Phone: 210-227-1603  
Facsimile: 210-225-3958

Juan M. Gonzalez  
Texas Bar No. 24002158  
Gonzalez & Otero LLC  
110 Broadway St., Ste. 510  
San Antonio, TX 78205  
Phone: 210-587-4000  
Fax: 210-587-4001

**ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the above was served via regular mail and facsimile and in accordance with the Texas Rules of Civil Procedure on September 2 of 2009 to:

Deborah Lynne Klein  
Office of the City Attorney  
Litigation Division  
111 Soledad St., 10<sup>th</sup> Fl.  
San Antonio, TX 78205

\_\_\_\_\_ CM/RRR  
\_\_\_\_\_ Facsimile (210-207-4357)  
\_\_\_\_\_ Express Mail  
\_\_\_\_\_ Hand Delivery  
\_\_\_\_\_ First Class  
\_\_\_\_\_ Email

JAVIER N. MALDONADO

BY  
MURKIN  
RECEIVED  
09 SEP -2 PM 3:32  
2011  
DIS PLEA CLERK  
FILED

DEC-11-2009 10:15 From:

To:2074357

Page:2/5

Cause No. 2009-CI-06289 DEC 10 PM 2:41

RUSSELL D. MARTIN,  
Plaintiff,

vs.

CITY OF SAN ANTONIO,  
Defendant.

IN THE DISTRICT COURT  
408<sup>TH</sup> JUDICIAL DISTRICT  
BY \_\_\_\_\_  
BEXAR COUNTY, TEXAS

**DEMAND FOR JURY AND MOTION TO SET ON JURY DOCKET**

Plaintiff, Russell D. Martin, demands a jury trial and pays the jury fee herewith.

Motion is also made that the above numbered and entitled cause be set for trial on the Jury Docket. The estimated length of trial is approximately four days.

Respectfully Submitted,

---

JAVIER N. MALDONADO  
Texas Bar No. 00794216  
110 Broadway St., Ste. 510  
San Antonio, Texas 78205  
Phone: 210-227-1603  
Facsimile: 210-225-3958

Juan M. Gonzalez  
Texas Bar No. 24002158  
Gonzalez & Otero LLC  
110 Broadway St., Ste. 510  
San Antonio, TX 78205  
Phone: 210-587-4000  
Fax: 210-587-4001

ATTORNEYS FOR PLAINTIFF

DEC-11-2009 10:16 From:

To:2074357

Page:3/5

**ORDER**

The above styled and numbered cause is set for trial on the Jury Docket for the 7<sup>th</sup> day of September, 2010 at 8:30 a.m., in the 57<sup>th</sup> Monitoring Court, 100 Dolorosa, Bexar County, Texas, San Antonio. The ADR docket is set for May 5<sup>th</sup>, 2010 at 8:30 a.m. in the 57<sup>th</sup> Judicial District Court, 100 Dolorosa, Bexar County, Texas, San Antonio.

DEC 10 2009

Signed on this    day of December, 2009.**JUDGE PRESIDING****CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the above was served via regular mail and facsimile and in accordance with the Texas Rules of Civil Procedure on December 10, 2009 to:

Deborah Lynne Klein  
Office of the City Attorney  
Litigation Division  
111 Soledad St., 10<sup>th</sup> Fl.  
San Antonio, TX 78205

CM/RRR  
 Facsimile (210-207-4357)  
 Express Mail  
 Hand Delivery  
 First Class  
 Email

JAVIER N. MALDONADO



OFFICE OF CIVIL JURY ASSIGNMENT CLERK  
BEXAR COUNTY COURTHOUSE-ROOM 422  
SAN ANTONIO, TEXAS 78205  
(210) 335-2520

March 31, 2010

RECEIVED  
LITIGATION  
APR 02 2010

CITY ATTORNEY'S OFFICE  
SAN ANTONIO, TEXAS

115132

NOTICE OF JURY TRIAL SETTING

DEBORAH KLEIN  
Attorney at Law  
111 SOLEDAD ST 10TH  
SAN ANTONIO, TX 78205-2230

RE: RUSSELL D MARTIN VS. CITY OF SAN ANTONIO  
Cause No: 2009-CI-06289

The above-styled and -numbered cause is set for trial ON THE MERITS on the 7th day of September, 2010 at 8:30 AM in the 37th District Court. Failure to appear may result in default or dismissal for want of prosecution.

All parties shall deliver Motions in Limine, Motions to Realign Parties or Equalize Peremptory Strikes, and a Proposed Jury Charge to all other parties by Noon on the last business day prior to the above-referenced trial date.

In the event the trial is expected to last ten (10) working days or longer, it is strongly suggested that a Rule 166 Pretrial Motion be heard at least sixty (60) days before the above-referenced setting date.

This cause is also set on the ADR docket on the 5th day of May, 2010 at 8:30 AM in the 57th District Court, Bexar County Courthouse. You do not have to appear if an Agreed Order of Referral for Mediation is Provided to the ADR Coordinator three (3) days prior to the setting. Otherwise, failure to appear as noticed may result in court selecting a mediator and allocating mediator fees between the parties.

DAVID A BERCHELMANN  
JURY MONITORING JUDGE

CC:

DEBORAH KLEIN  
JAVIER MALDONADO  
JUAN GONZALEZ

CAUSE NO. 2009CI06289

RUSSELL D MARTIN ) IN THE DISTRICT COURT  
 VS )  
 ) 408 JUDICIAL DISTRICT  
 CITY OF SAN ANTONIO ) BEXAR COUNTY, TEXAS

## ORDER OF REFERRAL FOR MEDIATION

This case is appropriate for mediation pursuant to TEX. CIV. PRAC. & REM CODE 154.001, et seq. By agreement of the parties, By appointment of the Court Joe Brozov, is appointed Mediator in the above case and all counsel are directed to contact Mediator to arrange the logistics of mediation within three (3) business days.

Mediation is a mandatory but non-binding settlement conference, conducted with the assistance of the Mediator. Mediation is private, confidential and privileged from process and discovery. After mediation, the Court will be advised by the Mediator, parties and counsel, only that the case did or did not settle. The Mediator shall not be a witness nor may the Mediator's records be subpoenaed or used as evidence. No subpoenas, citations, writs, or other process shall be served at or near the location of any mediation session, upon any person entering, leaving or attending any mediation session.

Fees for the mediation are to be divided and borne equally by the parties unless agreed otherwise, and shall be paid by the parties directly to the Mediator, and shall be taxed as costs. Each party and their counsel will be bound by the Rules for Mediation as adopted by the Civil District Judges in Special Order No. 30270, and shall complete the information forms as are furnished by the Mediator.

The Court ORDERS that all parties and their counsel must be present during the entire mediation process and each corporate party must be represented by a designated representative with full authority to settle the case. Counsel and parties shall proceed in a good faith effort to try to resolve this case and shall agree upon a mediation date to take place no later than 7/30/2010.

A violation of the Order shall be punished by contempt of Court, which is punishable by confinement in the County Jail for up to six (6) months and a fine of up to \$500.00.

Referral to mediation is not a substitute for trial and the case will be tried if not settled.

SIGNED

May 5, 2010

JUDGE PRESIDING

Fax sent by :

05-19-10 06:04p Pg: 2/3

CAUSE NO. 2009CI06289

RUSSELL D MARTIN	)	IN THE DISTRICT COURT
	)	
VS	)	403 JUDICIAL DISTRICT
	)	
CITY OF SAN ANTONIO	)	DEXAR COUNTY, TEXAS

## REPORT OF JUDICIAL APPOINTMENT AND APPROVAL OF PAYMENT FEE

On the MAY 05 2010 day of *Joe Brown*, SEN  
 was appointed as:

Guardian / Attorney ad litem to represent.  
 Attorney ad litem to represent respondent cited by publication.  
 Mediator (conditionally pursuant to separate written order as per TEX. CIV. PRAC. & REM. CODE 154).  
 Results of mediation conference:  
 Settled \_\_\_\_\_  
 Not Settled \_\_\_\_\_  
 Date of Mediation \_\_\_\_\_  
 Auditor (172, TEX. R. CIV. P. 172).  
 Mental Health Professionals (pursuant to separate written order and per TRCP, Rule 167a and Rule 510, TEX. R. CIV. EVID.).  
 Receiver (pursuant to separate written order and per Texas Family Code 3.58/Rules 695 and 695a, TRCP).  
 Master in Chancery(pursuant to separate written order and per Rule 171, TRCP).  
 Referee in Juvenile Court (pursuant to Family Code, 51.09g).  
 Social Study Investigators.

## FEE CHARGED BY APPOINTED:

\$ \_\_\_\_\_ PAID BY/BILLED TO \_\_\_\_\_  
 \$ \_\_\_\_\_ PAID BY/BILLED TO \_\_\_\_\_  
 \$ \_\_\_\_\_ PAID BY/BILLED TO \_\_\_\_\_

SIGNED AND SUBMITTED FOR COURT APPROVAL this \_\_\_\_\_ day of \_\_\_\_\_.

APPOINTED

APPROVED AND ORDERED this \_\_\_\_\_ day of \_\_\_\_\_.

JUDGE PRESIDING

Fax sent by :

05-19-18 06:04p Pg: 3/3

CAUSE NO: 2009CI06289 COURT:406 DATE / TIME: 05/05/2010 08:30AM  
STYLE: RUSSELL D MARTIN VS CITY OF SAN ANTONIO

SETTING COURT:057

TRIAL DATE/TIME: 09/07/2010 08:30AM

## ATTORNEY(S) FOR CASE:

JAVIER MOLDONADO	Office Nbr.	Fax Nbr.	JUAN GONZALEZ
DEBORAH KLEIN	210-227-1603	210-225-3958	
	210-207-8919	210-207-4357	

Office Nbr.	Fax Nbr.
210-587-4000	210-587-4001

ADR DOCKET HEARING: \_\_\_\_\_  
RESET DATE: \_\_\_\_\_  
DATE FOR MEDIATION: NLT: 7/23/10  
FEE ARRANGEMENT: split  
MEDIATOR: Joe Brown  
ACCPED - ORDERED: \_\_\_\_\_

344-17228



RECEIVED  
LITIGATION

AUG 20 2010

CITY ATTORNEY'S OFFICE  
SAN ANTONIO, TEXAS

August 18, 2010

NOTICE OF JURY TRIAL SETTING

DEBORAH KLEIN  
Attorney at Law  
PO BOX 839966 200  
SAN ANTONIO, TX 78283-3966

005449

RE: RUSSELL D MARTIN VS. CITY OF SAN ANTONIO  
Cause No: 2009-CI-06289

The above-styled and -numbered cause is set for trial ON THE MERITS on the 7th day of September, 2010 at 8:30 AM in the 37th District Court. Failure to appear may result in default or dismissal for want of prosecution.

All parties shall deliver Motions in Limine, Motions to Realign Parties or Equalize Peremptory Strikes, and a Proposed Jury Charge to all other parties by Noon on the last business day prior to the above-referenced trial date.

In the event the trial is expected to last ten (10) working days or longer, it is strongly suggested that a Rule 166 Pretrial Motion be heard at least sixty (60) days before the above-referenced setting date.

This cause is also set on the ADR docket on the \_\_\_\_\_ in the \_\_\_\_\_ District Court, Bexar County Courthouse. You do not have to appear if an Agreed Order of Referral for Mediation is Provided to the ADR Coordinator three (3) days prior to the setting. Otherwise, failure to appear as noticed may result in court selecting a mediator and allocating mediator fees between the parties.

DAVID A BERCHELMANN  
JURY MONITORING JUDGE

CC:

DEBORAH KLEIN  
JAVIER MALDONADO  
JUAN GONZALEZ

No. 2009CI06289

RUSSELL D. MARTIN

v.

CITY OF SAN ANTONIO

§  
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§

IN THE DISTRICT COURT

408TH JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

**ORDER GRANTING AGREED MOTION FOR CONTINUANCE**

On the AUG 19 2010 day of August, 2010, came on to be considered the parties' Agreed Motion for Continuance. After considering the Motion and the parties' agreement, the Court is of the opinion that the Motion should be GRANTED.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that the parties' Agreed Motion for Continuance is hereby GRANTED and this case is removed from the Court's trial docket for September 7, 2010 and reset for trial during the week of May 2, 2011.

SIGNED the \_\_\_\_\_ day of AUG 19 2010 2010



JUDGE MONITORING

AGREED:

Deborah Lynne Klein  
SBN: 11556750  
Office of the City Attorney  
111 Soledad, 10<sup>th</sup> Floor  
San Antonio, Texas 78205  
*Attorney for Defendant*

Javier Maldonado  
SBN: 00794216  
Law Offices of Javier Maldonado  
110 Broadway, Suite 510  
San Antonio, Texas 78205  
*Attorney for Plaintiff*

AUG-20-2010 11:59 From:Law Offices

2105874001

To:2102074357

Page:2/3

08/19/2010 10:29 2102074357

CITY ATTY LITIGATION

PAGE 82/83

No. 2009CI06289

RUSSELL D. MARTIN

IN THE DISTRICT COURT

V.

408TH JUDICIAL DISTRICT

CITY OF SAN ANTONIO

BEXAR COUNTY, TEXAS

§  
§  
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§  
§  
§**ORDER GRANTING AGREED MOTION FOR CONTINUANCE**

On the \_\_\_\_ day of August, 2010, came on to be considered the parties' Agreed Motion for Continuance. After considering the Motion and the parties' agreement, the Court is of the opinion that the Motion should be GRANTED.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that the parties' Agreed Motion for Continuance is hereby GRANTED and this case is removed from the Court's trial docket for September 7, 2010 and reset for trial during the week of May 2, 2011.

SIGNED the \_\_\_\_ day of \_\_\_\_\_, 2010

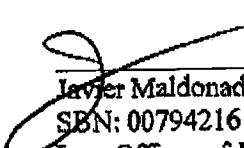
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JUDGE MONITORING

AGREED:



Deborah Lynne Klein  
 SBN: 11556750  
 Office of the City Attorney  
 111 Soledad, 10<sup>th</sup> Floor  
 San Antonio, Texas 78205  
 Attorney for Defendant



Javier Maldonado  
 SBN: 00794216  
 Law Offices of Javier Maldonado  
 110 Broadway, Suite 510  
 San Antonio, Texas 78205  
 Attorney for Plaintiff



OFFICE OF CIVIL JURY ASSIGNMENT CLERK  
BEXAR COUNTY COURTHOUSE-ROOM 422  
SAN ANTONIO, TEXAS 78205  
(210) 335-2525

December 1, 2010

**NOTICE OF JURY TRIAL SETTING**

DEBORAH KLEIN  
Attorney at Law  
PO BOX 839966 200  
SAN ANTONIO, TX 78283-3966

RE: RUSSELL D MARTIN VS. CITY OF SAN ANTONIO  
Cause No: 2009-CI-06289

The above-styled and -numbered cause is set for trial ON THE MERITS on the 2nd day of May, 2011 at 8:30 AM in the 131st District Court. Failure to appear may result in default or dismissal for want of prosecution.

All parties shall deliver Motions in Limine, Motions to Realign Parties or Equalize Peremptory Strikes, and a Proposed Jury Charge to all other parties by Noon on the last business day prior to the above-referenced trial date.

In the event the trial is expected to last ten (10) working days or longer, it is strongly suggested that a Rule 166 Pretrial Motion be heard at least sixty (60) days before the above-referenced setting date.

This cause is also set on the ADR docket on the in the District Court, Bexar County Courthouse. You do not have to appear if an Agreed Order of Referral for Mediation is Provided to the ADR Coordinator three (3) days prior to the setting. Otherwise, failure to appear as noticed may result in court selecting a mediator and allocating mediator fees between the parties.

JOHN D. GABRIEL  
JURY MONITORING JUDGE

CC:

DEBORAH KLEIN  
JAVIER MALDONADO  
JUAN GONZALEZ

KK60817.2

002361

No. 2009CI06289

RUSSELL D. MARTIN

v.

CITY OF SAN ANTONIO

§ IN THE DISTRICT COURT  
§ 408TH JUDICIAL DISTRICT  
§ § BEXAR COUNTY, TEXAS  
§

**AGREED MOTION FOR CONTINUANCE**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, Defendant City of San Antonio and Plaintiff Russell D. Martin, and file this, their Agreed Motion for Continuance and would show as follows:

This case is currently set for trial on May 2, 2011; however, additional discovery remains to be accomplished and extra time would allow for a possible mediation in this case. The parties hereby request a continuance until October 17, 2011. This continuance is not sought for delay, but so that justice may be done. Such continuance will not prejudice any party, and will allow the parties adequate time to explore additional settlement possibilities and adequately prepare for a trial on the merits.

WHEREFORE, PREMISES CONSIDERED, the parties respectfully request that this Honorable Court grant this Agreed Motion for Continuance and reset this case for trial on October 17, 2011.

bY

FILED  
DISTRICT CLERK  
BEXAR CO. TEXAS  
11 APR -6 AM 9:46  
DEPUTY

Respectfully submitted,

Office of the City Attorney  
Litigation Division  
111 Soledad St., 10<sup>th</sup> Floor  
San Antonio, TX 78205

  
Deborah Lynne Klein  
Attorney IV  
SBN: 11556750  
(210) 207-8919 / (210) 207-4357 FAX  
*Attorney for Defendant*

---

Javier Maldonado  
SBN: 00794216  
Law Offices of Javier Maldonado  
110 Broadway, Suite 510  
San Antonio, Texas 78205  
(210) 227-1603 / (210) 225-3958 Fax  
*Attorney for Plaintiff*

APR-06-2011 09:07 From: Maldonado  
04/06/2021 08:01 2102074357

2105874001

To: 2074357

CITY ATTY LITIGATION

Page: 3/7

PAGE 03/07

Respectfully submitted,

Office of the City Attorney  
Litigation Division  
111 Soledad St. 10<sup>th</sup> Floor  
San Antonio, TX 78205

~~Deborah Lynn Klein~~  
Attorney IV  
SBN: 11556750  
(210) 207-8919 / (210) 207-4357 FAX  
*Attorney for Defendant*

~~Javier Maldonado~~  
SBN: 00794216  
Law Offices of Javier Maldonado  
110 Broadway, Suite 510  
San Antonio, Texas 78205  
(210) 227-1603 / (210) 225-3958 Fax  
*Attorney for Plaintiff*

No. 2009CI06289

RUSSELL D. MARTIN

v.

CITY OF SAN ANTONIO

§  
§  
§  
§  
§

IN THE DISTRICT COURT  
408TH JUDICIAL DISTRICT  
BEXAR COUNTY, TEXAS

**ORDER GRANTING AGREED MOTION FOR CONTINUANCE**

On the APR 06 2011 day of April, 2011, came on to be considered the parties' Agreed Motion for Continuance. After considering the Motion and the parties' agreement, the Court is of the opinion that the Motion should be GRANTED.

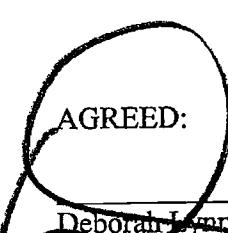
IT IS THEREFORE ORDERED, ADJUDGED and DECREED that the parties' Agreed Motion for Continuance is hereby GRANTED and this case is removed from the Court's trial docket for May 2, 2011 and reset for trial during the week of October 17, 2011.

SIGNED the \_\_\_\_\_ day of APR 06 2011, 2011

**JOHN D. GABRIEL**

JUDGE MONITORING

AGREED:

  
Deborah Lynne Klein  
SBN: 11556750  
Office of the City Attorney  
111 Soledad, 10<sup>th</sup> Floor  
San Antonio, Texas 78205  
*Attorney for Defendant*

Javier Maldonado  
SBN: 00794216  
Law Offices of Javier Maldonado  
110 Broadway, Suite 510  
San Antonio, Texas 78205  
*Attorney for Plaintiff*

APR-06-2011 09:07 From: Maldonado  
04/06/2021 08:01 2102074357

2105874001

To: 2074357

CITY ATTY LITIGATION

Page: 4/7  
PAGE 04/07

No. 2009CI06289

RUSSELL D. MARTIN

v.

CITY OF SAN ANTONIO

IN THE DISTRICT COURT

408TH JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

**ORDER GRANTING AGREED MOTION FOR CONTINUANCE**

On the \_\_\_\_\_ day of April, 2011, came on to be considered the parties' Agreed Motion for Continuance. After considering the Motion and the parties' agreement, the Court is of the opinion that the Motion should be GRANTED.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that the parties' Agreed Motion for Continuance is hereby GRANTED and this case is removed from the Court's trial docket for May 2, 2011 and reset for trial during the week of October 17, 2011.

SIGNED the \_\_\_\_\_ day of \_\_\_\_\_, 2011

AGREED:

Deborah Lynne Klein  
SBN: 11556750  
Office of the City Attorney  
111 Soledad, 10<sup>th</sup> Floor  
San Antonio, Texas 78205  
Attorney for Defendant

**JUDGE MONITORING**

Javier Maldonado  
SBN: 00794216  
Law Offices of Javier Maldonado  
110 Broadway, Suite 510  
San Antonio, Texas 78205  
Attorney for Plaintiff

006067



OFFICE OF CIVIL JURY ASSIGNMENT CLERK  
BEXAR COUNTY COURTHOUSE-ROOM 422  
SAN ANTONIO, TEXAS 78205  
(210) 335-2920

May 2, 2011

NOTICE OF JURY TRIAL SETTING

RECEIVED  
LITIGATION

MAY 06 2011

CITY ATTORNEY'S OFFICE  
SAN ANTONIO, TEXAS

DEBORAH KLEIN  
Attorney at Law  
111 SOLEDAD 10TH FLOOR  
SAN ANTONIO, TX 78205

RE: RUSSELL D MARTIN VS. CITY OF SAN ANTONIO  
Cause No: 2009-CI-06289

The above-styled and -numbered cause is set for trial ON THE MERITS on the 17th day of October, 2011 at 8:30 AM in the 150th District Court. Failure to appear may result in default or dismissal for want of prosecution.

All parties shall deliver Motions in Limine, Motions to Realign Parties or Equalize Peremptory Strikes, and a Proposed Jury Charge to all other parties by Noon on the last business day prior to the above-referenced trial date.

In the event the trial is expected to last ten (10) working days or longer, it is strongly suggested that a Rule 166 Pretrial Motion be heard at least sixty (60) days before the above-referenced setting date.

This cause is also set on the ADR docket on the in the District Court, Bexar County Courthouse. You do not have to appear if an Agreed Order of Referral for Mediation is Provided to the ADR Coordinator three (3) days prior to the setting. Otherwise, failure to appear as noticed may result in court selecting a mediator and allocating mediator fees between the parties.

JANET LITTLEJOHN

JURY MONITORING JUDGE

CC:

DEBORAH KLEIN  
JAVIER MALDONADO  
JUAN GONZALEZ

FILED  
DISTRICT CLERK No 2009CI06289  
BEXAR CO. TEXAS  
RUSSELL D. MARTIN  
V.  
CITY OF SAN ANTONIO

JUN 22 P 2:27 PM '11  
DEPUTY

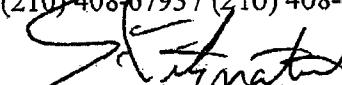
IN THE DISTRICT COURT  
408TH JUDICIAL DISTRICT  
BEXAR COUNTY, TEXAS

BY:  
**NOTICE OF APPEARANCE OF COUNSEL**

Defendant **CITY OF SAN ANTONIO** hereby gives notice that Shawn Fitzpatrick of **FITZPATRICK & KOSANOVICH, P.C.**, has entered his appearance as one of the attorneys of record for Defendant City of San Antonio.

Respectfully submitted,

**FITZPATRICK & KOSANOVICH, P.C.**  
P.O. Box 831121  
San Antonio, Texas 78283-1121  
(210) 408-6793 / (210) 408-6797 FAX

  
**SHAWN FITZPATRICK**  
SBN: 00787474  
*Attorney for Defendant City of San Antonio*

---and---

**CITY OF SAN ANTONIO**  
Michael D. Bernard, City Attorney  
SBN: 02211310  
Office of the City Attorney  
Litigation Division  
111 Soledad St., 10<sup>th</sup> Floor  
San Antonio, Texas 78205  
(210) 207-8789 / (210) 207-4357 FAX

  
**DEBORAH LYNNE KLEIN** *SKF*  
Assistant City Attorney  
SBN: 11556750  
*Attorney for Defendant City of San Antonio*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument has been served on the following via facsimile on June 22, 2011:

Javier Maldonado  
Law Offices of Javier Maldonado  
110 Broadway, Suite 510  
San Antonio, Texas 78205

Juan M. Gonzalez  
Gonzalez & Otero, LLC  
110 Broadway St., Suite 510  
San Antonio, Texas 78205



SHAWN FITZPATRICK

RUSSELL D. MARTIN,  
Plaintiff,

vs.

CITY OF SAN ANTONIO,  
Defendant.

FILED  
Cause No. 2009-01-06289  
BEXAR CO. TEXAS

2011 SEP 19 P 4:21 408<sup>TH</sup> JUDICIAL DISTRICT

DEPUTY  
BY: \_\_\_\_\_

IN THE DISTRICT COURT  
BEXAR COUNTY, TEXAS

PLAINTIFF'S SECOND AMENDED PETITION

NOW COMES RUSSELL D. MARTIN, and files this his Second Amended Petition against Defendant City of San Antonio ("Defendant" or "San Antonio"), and would respectfully show the Court as follows:

1. Pursuant to Tex. R. Civ. P. 190.3, discovery is intended to be conducted at Level 2.

Parties

2. Plaintiff is an individual residing in Stockdale, Wilson County, Texas. Defendant City of San Antonio is a local governmental entity as such term is defined in Tex. Gov't Code § 554.001(2)(B). Defendant San Antonio may be served with process by serving the Honorable Leticia M. Vacek, City Clerk, City of San Antonio, at 100 Military Plaza, 2<sup>nd</sup> Floor, San Antonio, Texas 78205. Plaintiff affirmatively pleads that he seeks injunctive relief, actual damages, courts, reasonable attorney's fees, reinstatement, compensation for lost wages, and the maximum amount of monetary relief for compensatory damages as allowed under Tex. Gov't Code § 554.003.

Jurisdiction and Venue

3. Plaintiff seeks relief within the jurisdictional limits of this Court. This Court has subject matter jurisdiction of this cause pursuant to Tex. Const. Art. V § 8 and

Tex. Gov't Code § 554.007. This Court also has personal jurisdiction over the parties, namely, a local governmental unit of the State of Texas and a natural person residing in Texas.

4. Venue is proper under Tex. Civ. Prac. & Rem. Code § 15.02 as Bexar County is the county in which all or a substantial part of the events or omissions giving rise to the claim occurred.

#### Facts

5. Plaintiff is a 62 year-old male. In 1969, Defendant San Antonio's Police Department hired Plaintiff in its patrol unit. Plaintiff subsequently worked for the Traffic Division and then the Expressway Patrol. In 1979, Plaintiff voluntarily left Defendant's employment to work for the Southern Pacific Railroad.

6. Plaintiff again applied for employment with Defendant in 1989 and Defendant San Antonio hired Plaintiff to work as a police officer with the San Antonio Airport Police Department.

7. On or about March 2007, Plaintiff was working as acting Sergeant under the supervision of Lt. John Gruchacz. Several weeks later, I became aware that Lt. Gruchacz was discriminating and retaliating against Patrol Officer Kim Igleheart because of her sex and disabled condition and for opposing discrimination. Lt. Gruchacz instructed me to "get" Ms. Igleheart on anything I could. I told Lt. Gruchacz that I would not participate in retaliation against Ms. Igleheart.

8. On or about June 22, 2007, Plaintiff was interviewed by Defendant's EEO office concerning allegations of discrimination and retaliation against Ms. Igleheart by Lt. Gurchacz.

9. Thereafter, on or about, September 2007, Lt. Gurchacz, acting within the course and scope of his employment with Defendant, demoted Plaintiff by stripping Plaintiff of his "acting Sergeant" position.

10. Further, on or about March 18, 2008, Plaintiff reported to his immediate supervisor, Lt. Gruchacz, that Airport Police Sergeant (Sgt.) Orlando Battles was fraudulently reporting his work hours, in effect violating, among other laws, Tex. Penal Code §§ 37.02 (perjury) and 37.10 (tampering with a government record).

11. Such allegation was subsequently forwarded to Lt. Richard Griffin.

12. On or about June 16, 2008, Lt. Griffin forwarded Plaintiff's complaint of Sgt. Battles to Airport Police Chief Ron Bruner.

13. Soon after Chief Bruner received Plaintiff's allegation of wrongdoing by Sgt. Battles, Defendant and its agents began a campaign of retaliation against Plaintiff.

14. On June 17, 2008, Lt. Gruchacz assigned Plaintiff to work under Sgt. Battles, the same person Plaintiff reported to Defendant for committing criminal violations.

15. Plaintiff complained to Lt. Gruchacz and submitted written objections about the reassignment.

16. On June 20, 2008, Chief Bruner advised Plaintiff that he would not be working under Sgt. Battles.

17. But on June 24, 2008, Defendant San Antonio advised Plaintiff that the department's Internal Affairs Unit was investigating disciplinary action against him for an email Plaintiff wrote to Lt. Gruchacz on March 1, 2008.

18. On August 6, 2008, Plaintiff appeared before the Advisory Action Board

regarding alleged violations relating to the email he sent to Lt. Gruchacz on March 1, 2008. At the same time that it was reviewing Plaintiff's case, the Board was also considering disciplinary action against two other officers, one of them being Sgt. Battles for his fraudulent reporting of work hours. Plaintiff later learned that the Board recommended that he be suspended for 3 days and that Sgt. Battles be suspended for 10 days.

19. Later on November 18, 2008, Plaintiff was called to a meeting with Chief Bruner, Lt. Griffin, Lt. Gruchacz, Assistant Aviation Director Tim O'Krongley, and Human Resource Specialist Mona Osburn. At this meeting, Defendant served Plaintiff with a proposed notice of termination for alleged violations arising out of the March 1, 2008 incident as well as comments Plaintiff allegedly made on June 18, 2008. Prior to this meeting, Defendant had not provided any notice to Plaintiff that it was seeking disciplinary action against him related to the comments alleged to have been made on June 18, 2008.

20. The alleged June 18, 2008 comments concerned Plaintiff's reservations about working under Sgt. Battles. According to Defendant, such comments were a violation of the workplace violence policy and required Plaintiff's immediate suspension notwithstanding the fact that Plaintiff had been working for five (5) months without any problems. Moreover, this was the first time Defendant ever notified Plaintiff that his June 18, 2008 comments were the subject of disciplinary action.

21. On November 18, 2008, Defendant placed Plaintiff on administrative leave pending a decision on his proposed termination.

22. On November 25, 2008, Plaintiff submitted a response to Defendant's

proposed termination. Defendant, however, did not allow Plaintiff to come onto airport property and required that Lt. Griffin escort Plaintiff.

23. On December 9, 2008, Plaintiff met with Ms. Osburn, Chief Bruner, and Lt. Griffin. Defendant served Plaintiff with a final notice of termination of his employment. Defendant terminated Plaintiff's employment purportedly because of the email on March 1, 2008 and the comments allegedly made by Plaintiff on June 18, 2008. To Plaintiff's knowledge, Defendant never conducted an investigation into the alleged June 18, 2008 comments.

24. Plaintiff timely appealed his termination to the San Antonio Municipal Civil Commission and the Commission held a hearing on Plaintiff's termination on February 19-20, 2009.

25. At the conclusion of the hearing, the Commission concluded that Defendant's evidence did not support Plaintiff's termination and recommended that Defendant reverse its decision to terminate Plaintiff and, instead, reinstate him. In addition, the Commission recommended that Plaintiff be suspended for 3 days for the March 1, 2008 email and 5 days for the June 18, 2008 comments.

26. On March 17, 2009, Defendant City Manager Sheryl Sculley rejected the Commission's findings and recommendation even though she had neither the benefit of having heard live testimony or reviewing the evidence against Plaintiff.

#### Unlawful Retaliation

27. Incorporating paragraphs 1-26 above, Plaintiff alleges that Defendant retaliated against him (i) in violation of Tex. Labor Code §21.055 for Plaintiff's opposition of a discriminatory practice and his participation in an investigation,

proceeding or hearing ; and (ii) in violation of Tex. Gov't Code §554.002 by terminating Plaintiff's employment for participating in protective activity by reporting a violation of law by another public employee to an appropriate law enforcement authority.

**Due Process Violations**

28. Incorporating paragraphs 1-26 above, Plaintiff alleges that Defendant subjected him, or caused him to be subjected, to the deprivation of a constitutional right by terminating his employment without due process in violation of 42 U.S.C. § 1983. Defendant violated Plaintiff's minimal due process to which he was entitled under the Fourteenth Amendment of the United States Constitution. Specifically, Defendant was required by applicable law and governing procedures to conduct an investigation into the comments allegedly made by Plaintiff on June 18, 2008 if those comments were intended to be used by Defendant to terminate Plaintiff's employment. Defendant did not conduct any investigation into the comments prior to terminating his employment. Additionally, Defendant denied Plaintiff any sort of a *Loudermill* hearing prior to the discharge of Plaintiff's employment. Defendant's actions deprived Plaintiff of his constitutionally protected property interest in his employment.

**Damages**

29. As a result of the Defendant's unlawful conduct, Plaintiff has suffered and will continue to suffer actual and compensatory damages.

30. Plaintiff seeks all the remedies and relief authorized by Tex. Labor Code §21.2585, Tex. Labor Code §21.259, and Tex. Gov't Code §554.003, including but not limited to court costs, reinstatement, actual damages, lost wages, front pay, court costs, attorney's fees, and compensatory damages for past and future pecuniary losses,

emotional pain, suffering inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses.

**Exhaustion of Administrative Procedures**

31. Plaintiff has exhausted all administrative procedures prerequisite to bringing this cause to Court.

32. Plaintiff availed himself of the appeal procedures afforded to city employees and timely appealed his termination to the San Antonio Civil Service Commission.

33. Defendant rendered a final decision on Plaintiff's appeal on March 17, 2009.

34. This suit was filed within the 30 days after exhaustion of March 17, 2009, the date when the appeal procedures were exhausted.

35. Further, on or about May 6, 2009, Plaintiff filed a complaint with the EEOC, with election that such complaint be filed with the Civil Rights Division of the Texas Workforce Commission, alleging that Defendant had unlawfully retaliated against him.

36. On or about July 30, 2009, the EEOC issued a decision with respect to Plaintiff's retaliation claim. Such decision was received by Plaintiff's counsel on or about August 2, 2009.

37. On or about August 24, 2009, the Texas Workforce Commission issued a Right to Sue notice. This suit is filed within two years of the accrual of the action and is timely. Therefore, Plaintiff has exhausted all administrative procedures prerequisite to bringing this cause to court.

38. Plaintiff demands a jury trial on all issues of fact and damages arising in this case.

**Prayer for Relief**

WHEREFORE, Plaintiff requests that Defendant be cited to appear and answer, and that on final trial, Plaintiff have the following:

1. Judgment against Defendant for the lost wages, front pay, actual damages and compensatory damages suffered by Plaintiff as a result of Defendant's conduct, in an amount within the jurisdictional limits of the Court;
2. An order directing Defendant to reinstate Plaintiff to his former position or an equivalent position;
3. Costs of suit;
4. Reasonable attorney's fees;
5. Such other and further relief to which the Plaintiff may be justly entitled.

Respectfully Submitted,

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**ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the above was served via regular mail and facsimile and in accordance with the Texas Rules of Civil Procedure on September \_\_\_\_ of 2009 to:

Deborah Lynne Klein  
Office of the City Attorney  
Litigation Division  
111 Soledad St., 10<sup>th</sup> Fl.  
San Antonio, TX 78205

\_\_\_\_ CM/RRR  
\_\_\_\_ Facsimile (210-207-4357)  
\_\_\_\_ Express Mail  
\_\_\_\_ Hand Delivery  
\_\_\_\_ First Class  
\_\_\_\_ Email

JAVIER N. MALDONADO